

Rajkumar Vs. State of M.P.

Rajkumar Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/505919

Court : Madhya Pradesh

Decided On : Apr-25-2008

Reported in : 2008(3)MPHT365

Judge : A.K. Gohil, J.

Appellant : Rajkumar

Respondent : State of M.P.

Advocate for Pet/Ap. : Shri. Atul Gupta

Disposition : Petition allowed

Judgement :

ORDER

A.K. Gohil, J.

1. Petitioner has filed this petition under Section 482, Cr.PC for quashing the proceedings pending before JMFC, Ganjbasoda as R.T. No. 1526/06 in connection with Crime No. 194/92.

2. The brief facts of the case are that on 1-4-2005 at about 9.30 p.m. Akhil Jain and Anil Jain were returning on their motorcycle from their shop. In front of the Police Station, two known criminals and history sheeter of the town of Ganjbasoda namely Ajay Pahelwan and Durgesh Yadav, who were in drunken condition,

stopped their motorcycle. There was altercation in which they took away Akhil's golden chain. They went to lodge the police report. A.S.I. K.S. Chandel was posted at Police Station and he was avoiding to lodge the report because he was having friendly relation with aforesaid two criminals. On the intervention of Additional S.P., Vidisha F.I.R. was written at No. 192/05 against Durgesh Yadav and Ajay Pehlwan under Sections 294, 341, 323, 506(B) of IPC but did not mention the fact of snatching of gold chain. In the meantime, ASI Chandel informed the criminals on Mobile Phone and they came at the police station and just to counter the case a cross FIR was lodged at Crime No. 193/05 against the complainant. In the meantime, some persons including Kanchhedi Lal Jain, Kamal Singh, Banarsi Lal, Vaibhav, Akhil, Rajkumar and other persons came to know that some quarrel took place at police station and they came at the police station to enquire facts. It is stated that some altercation took place between the parties. On that with a view to falsely implicate the members of the complainant party, ASI Chandel himself lodged one FIR at Crime No. 194/05 against the aforesaid five persons that Kanchhedilal fired on him by his revolver which hit on the left side of his stomach and the second fire was made by Banarasilal, Vaibhav, Akhil, Rajkumar, which hit his mobile phone and Anr. FIR of Ajay Singh was written as Crime No. 195/05 that these persons caused some injuries to him. ASI Chandel at his own got himself medically examined and Doctor recorded one lacerated wound and thereafter he was examined by Medical Board of three doctors and it was found that the injury sustained by the injured does not seem to be of any firearm. In both the cases Crime Nos. 194/05 and 195/05, the matter was investigated and in Crime No. 195/05 charge-sheet has been filed under Sections 147, 148, 149, 323 and 506, IPC against petitioners and others, but in the Crime No. 194/05, registered under Sections 307, 294, 506, 147 and 149, IPC the matter was referred to CID for enquiry.

3. During CID enquiry in Crime No. 194/05, Investigation Officer recorded the statement of various witnesses who are neighbours and having shops opposite the police station. Statement of Ayub Qureshi, Mohd. Ibrahim, Mohd. Aziz, Mohd. Ayub Jawahar Singh, Ajay Tiwari were recorded and they all have stated that Kanchhedilal was empty handed. He has gone to the police station just to enquire what had happened to Akhil and Amit. During enquiry CID found that there was no

occasion for him to carry a revolver as he is a respected person of the city and is Ex-Chairman of the Municipal Council, Ganj Basoda. Investigation Officer also found that ASI Chandel was having close link with Durgesh Yadav and Ajay Pehalwan and he was using the SIM No. 9893485117 9893485117 , which was in the name of Birju Yadav, brother of Durgesh Yadav. CID found that false Crime case No. 194/05 was registered deliberately by ASI Chandel. The conduct of Chandel has created doubt as his clothes were shown to be seized but those clothes were not referred for examination to Medico Legal Institute and subsequently it was reported to have been lost. No pallets or empty cartridge was recovered from the spot and his version is belied by medical evidence as medical Board found that he had not received any firearm injury and during enquiry it was found that revolver of Kanchhedilal was under repair and was deposited at the repairing shop. With all the aforesaid facts, the CID submitted the Final Report dated 21-6-2006 that there is no evidence to prosecute them but the learned Magistrate rejected the F.R. submitted by the CID took cognizance in the matter and directed to issue non bailable warrants against the accused persons, against which the petitioner has filed this petition under Section 482, Cr.PC for quashing the entire proceedings in RT No. 1526/2006 in connection with Crime No. 194/05.

4. Shri Atul Gupta, learned Counsel for the petitioner submitted that the learned Magistrate has committed illegality in rejecting the Final Report filed by the CID after investigation, as it is a case of no evidence. Learned Magistrate has not recorded any reason for rejecting the report. During investigation CID found that both the incident of Crime Nos. 194/05 and 195/05 took place at the same time out of the same incident, therefore there was no necessity to register two crimes. The story of Crime No. 194/05 was fabricated by K.S. Chandel, ASI as he was in hand in gloves with two known criminals of the town, i.e., Ajay Pahelwan and Durgesh Yadav. He submitted that Medical Board has not found any firearm injury as narrated by ASI Chandel, therefore the case is medically belied. Seized clothes were not referred for chemical examination and subsequently it was submitted that they have been lost. CID recorded the statement of various persons including the neighbours, those who were independent persons. Nobody supported the case of the prosecution. Use of revolver was also found doubtful as no pallet or empty cartridge was recovered from the spot. Therefore, he vehemently argued and

submitted that the action of the learned Magistrate is totally illegal and he has wrongly rejected the FR and has wrongly taken the cognizance and directly issued the warrant of arrest. The action is mala fide and liable to be quashed. Shri Gupta also submitted that for the same set of facts and incident two crimes can not be registered, as it is violation of Article 20(2) of the Constitution of India.

5. Shri Mohd.Irshad, learned Panel Lawyer for the respondent State and complainant submitted that though the matter was investigated by CID and CID did not find any prima facie case against the petitioner and during the course of argument was unable to justify the action of the Magistrate. He admitted this position that CID report is binding on the State.

6. Having heard the learned Counsel for the parties, I have perused the F.R. submitted by the CID as well as the impugned order of taking cognizance passed by the Magistrate. From the perusal of the CID report it is clear that both the Crime Nos. 194/05 and 195/05 were registered out of the same incident as the incident took place at the same time and in the Crime No. 195/05 charge-sheet has been filed in the Court and the trial is pending. In Crime No. 194/05 I.O. has found that conduct of ASI Chandel was doubtful. He was having close relations with the two criminals of the town, i.e., Ajay Pahelwan and Durgesh Yadav. Number of criminal cases are pending against both of them and their details is also available on record. The report lodged by ASI Chandel is not supported by independent witness. It was also found medically belied by the Medical Board as the Medical Board did not find any fire-arm injury on his body. The clothes were not referred for examination and it was found that material evidence was suppressed and subsequently clothes were lost and therefore the medical evidence was destroyed. No pallet or empty cartridge was found from the spot. None of the independent witnesses supported that Kanchhedilal and other persons came on the spot with the fire-arm. It was found that they have just gone to enquire about incident that why the report of the complainant was not lodged. ASI Chandel was using the SIM No. 9893485117 9893485117 of Birju Yadav, brother of Durgesh Yadav and it was found that it was a case of false implication and CID was of the view that there is no evidence and when the trial is pending in Crime No. 195/05, then there can not be any second prosecution and no Crime No. 194/05 ought to have been

registered.

7. Section 169 of the Code of Criminal Procedure enables the officer-in-charge of a police station to release the accused, when there is no sufficient evidence, is found against him. This section also relates to cases in which it is found that there is no sufficient evidence for forwarding the accused to a Magistrate, the Final Report can be submitted before the Magistrate. It is true that the Final Report is not binding on the Magistrate and if the Magistrate differs from the opinion of the I.O., he can take cognizance or order for further investigation, but that action of the Magistrate is a judicial action and at that stage while taking decision on Final Report the Magistrate has to act judicially as a Court [See : Nirmal Singh v. State of U.P. 1979 Cr.LJ (DB) (All.)]. Magistrate is required to weigh the prima facie evidence and take a judicial decision. In one case, Rajasthan High Court was of the view that the notice to the accused is necessary before rejecting the F.R. and if no notice is given the order taking cognizance was liable to be quashed. [See : 1988 Cr.LR (Raj) 128].

8. In another case, the same High Court was of the view that if protest petition is lodged by the complainant, and the complainant wants to be heard on the question, whether report under Section 169 should be accepted or not, the accused should also be heard on the point. [See : Hardev Singh v. State of Rajasthan 1986 Cr.LJ 1515]. This appears to be logical because when a final report is submitted in favour of the accused persons and the investigation agency is of the view that no case is made out for prosecuting the accused and prima facie, evidence is defiance, if the Magistrate wants to hear the complainant it is obligatory on the part of the Magistrate to also hear the accused persons. If any poorest petition is filed it has to be treated as complaint and law requires the Magistrate to record the statement of complainant and his witnesses. [See : Kallu v. Shahid Ali 1995 Cr.LJ 3483 (All.)] and Magistrate cannot call upon the police to submit charge-sheet. [1986 (3) Crimes 559 (Bombay)].

9. In the case of AmarPremchand v. The State : [1960]1SCR200 , the M.P. High Court was also of the view that under the law a Magistrate can take cognizance of a case even where the police was of opinion that there was no case against the

accused, but law does not empower the Magistrate to order the Police to submit a charge-sheet against the accused.

10. In the case of *Abhinandan Jha v. Dinesh Mishra* : 1968 CriLJ97 , Their Lordships of the Supreme Court have clearly held as under:

18. We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

19. The question can also be considered from another point of view. Supposing the police send a report, viz., a charge-sheet under Section 170 of the Code. As we have already pointed out the Magistrate is not bound to accept that report, when he considers the matter judicially. But can he differ from the police and call upon them to submit a final report, under Section 169 In our opinion, the Magistrate has no such power. If he has no such power, in law, it also follows that the Magistrate has no power to direct the police to submit a charge-sheet, when the police have submitted a final report that no case is made out for sending the accused for trial. The functions of the Magistracy and the police, are entirely different, and though, in the circumstances mentioned earlier, the Magistrate may or may not accept the report, and take suitable action, according to law, he can not certainly infringe (sic : impinge) upon the jurisdiction of the police, by compelling them to change their opinion, so as to accord with his view.

20. Therefore, to conclude, there is no power, expressly or implidely conferred, under the Code, on a Magistrate to call upon the police to submit a chargesheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.

11. Admittedly, in this case the Trial Court has not passed any reasoned order rejecting the F.R., which was based on a detailed investigation. He simply rejected the F.R. Without considering it judicially on the protest petition and thereafter he has directly issued the coercive process and warrant of arrest against the accused persons without hearing them. It is also clear that while passing the impugned order, there was no material on record before the Magistrate against the accused person. He has not recorded the statement of complainant or witnesses and has also not considered this aspect of the matter that in the absence of any material, how a coercive process can be issued. As argued by the Counsel for the parties, when only one incident took place at the one place at the same time and out of the same incident, naturally two crimes cannot be registered.

12. Thus, considering the totality of the facts and circumstances of the case including legal position, I am of the view that the learned Magistrate acted mechanically in issuing coercive process. He has wrongly rejected the F.R. without a reasoned order. If he was not satisfied with the Final Report, he could have recorded the statement of complainant and witnesses before issuing process, but the correct procedure laid down under law was not adopted. There was no application of mind and in the absence of any material or evidence, no case was made to take cognizance when the State itself was satisfied that the petitioners have been implicated falsely and there is no material against them to proceed further in the matter. There should be some material before the Magistrate to proceed further or to send him for trial but in the absence of such material, the Magistrate can not take any cognizance and can not issue any process.

13. Therefore, the order passed by the learned Magistrate dated 30-6-2007 is per se illegal and cannot be held to be a judicial order and cannot be allowed to stand in law. Consequently, this petition is allowed. Order dated 30-6-2007 is set aside and the Final Report filed by the CID is accepted and the proceeding of Crime No. 194/05 and R.T. No. 1526/06 are quashed.